



# Oregon

Kate Brown, Governor

## Governor's Advisory Committee on DUII

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**DATE:** March 2, 2017

**TO:** House Judiciary Committee

**FROM:** Chuck Hayes, Chair  
Governor's Advisory Committee on DUII

**SUBJECT:** **Support for HB 2613**

Chair Barker and Members of the House Judiciary Committee:

I am providing the following written testimony in support of House Bill 2613 which incorporates into the DUII statute those drugs that do not fall under the schedule of controlled substances list but nonetheless impair a person's ability to safely operate a motor vehicle.

Under the current Oregon DUII statute (ORS 813.010), a driver can only be charged with DUII if they are under the influence of intoxicating liquor, a controlled substance, an inhalant, or any combination of the three. The statute does not include non-controlled drugs or over-the-counter (OTC) substances which taken in excess can impair a person.

There are approximately 45 states in the country with impaired driving statutes that include non-controlled substances that cause impairment but are outside of the controlled substance list. The majority of those states include "any drug" or "any impairing substance" while some others include drugs that are capable of abuse. Oregon is one of only 6 states in the country that limit its DUII statute to drugs that are on the controlled substance list. Year after year more states expand their DUII statutes to include non-controlled substances in recognition of the growing incidents of drivers impaired by drugs.

Since the inception of the Oregon Drug Recognition Expert (DRE) program in 1995, the program has seen an increasing number of impaired driving incidents involving non-controlled drugs. In these cases, the suspect could not be charged or prosecuted for DUII even in instances where someone was hurt and where there is obvious impairment. In addition, without entering diversion, or receiving a conviction in cases where the person is a repeat offender, the person avoids a substance abuse evaluation and possible treatment.

One area of concern is the expanding development of synthetic non-controlled substances such as synthetic cannabinoids or synthetic opioids. Many of these newly developed substances are appearing in our hospital emergency rooms, as well as in driving incidents. Those that make these substances continue to slightly alter the chemical structure of the substance and as a result the substances no longer qualify as a controlled substance. The state of Oregon (and the Federal government) is unable to keep up with the number of illicit

substances that should be on the controlled substances list as they continue to evolve on a daily basis.

Revising the Oregon DUII statute to include impairment by non-controlled substances would provide law enforcement and prosecutors the tools necessary to properly address the impaired drivers who abuse these numerous substances and drive dangerously on our roadways. It will also assist in educating the public about the health-related dangers of abusing these types of substances, and the hazards of driving under the influence of them.

By enacting this bill, it will **not**;

**Require the Oregon State Police Crime Laboratory to do additional testing other than what they do now.** The crime lab currently tests for and reports the most commonly encountered drugs and over-the-counter substances.

**Advocate the non-use of prescription drugs or over-the-counter substances.** The GAC on DUII, along with many other organizations, support the responsible use of legal drugs and over-the-counter substances. The addition of an affirmative defense has been added to address those individuals who have taken a non-controlled substance as prescribed, or as recommended on the packaging, but where the person had an adverse reaction that could not have been anticipated.

**Create an increased liability to physicians, pharmacists, and store owners who dispense prescription drugs that are non-controlled or over-the-counter substances.** There is no difference in prescribing and dispensing controlled substances such as Alprazolam (Xanax), Hydrocodone (Vicodin), or other drugs that when abused can cause impairment and are currently covered in the DUII statutes.

**Change the current procedures for arresting and testing a suspected impaired driver.** Officers will still have to establish probable cause to make a traffic stop and arrest. The DUII investigation procedure would remain the same with the passage of this bill. The only difference would be that if the cause of the impairment is a non-controlled substance, the charge for DUII would not have to be dismissed and the case would proceed through the judicial process.

In summary, the Governor's Advisory Committee on DUII urges your support of HB 2613 because we believe this is a critical step needed to reduce drug-impaired driving incidents and is a needed public safety measure in Oregon.

Sincerely,

Chuck Hayes  
Chair, GAC-DUII